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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/876,798	06/07/2001	Norman C. Wong	13587.27	9042

7590 01/26/2005

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EXAMINER

DALENCOURT, YVES

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/876,798

Applicant(s)

WONG ET AL.

Examiner

Yves Dalencourt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/07/02, 12/18/02</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is responsive to communication filed on 06/07/2001.

Specification

The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code (see paras. 0022 – 0024, page 2). Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Burman et al (Pub. No. US 2001/0010059; hereinafter Burman).

Regarding claim 1, Burman teaches a method for selectively communicating a content over a communications network to a user system as a distributed network that allows for resource sharing and data communication (fig. 1; para. 0034). In particular, Burman discloses the claimed features of determining automatically a network

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communication throughput indicative of the communications performance the user system is experiencing (para. 0035, lines 1 – 5; as to determine transfer time for data, files sent or transmitted between devices connected to a computer network and calculate the bandwidth between the devices, and the bandwidth for users connected to the computer network); selecting the content to be communicated based on the network communication throughput (para. 0035, lines 5 – 15; para. 0036, lines 1 – 11. Applicant should duly note that Burman discloses that high bandwidth users will get sophisticated rich media content while lower bandwidth users will get quicker content downloads from servers by determining or monitoring transfer time and bandwidth in real time or near real time); and communicating to the user system the content selected (para. 0036; lines 11 – 26; Burman discloses that the content selected can be and delivered to a user can be for example, a black and white image for a low-bandwidth user, color version of the same image for an average bandwidth user, and so on).

Regarding claim 2, Burman teaches the method of claim 1, whereby the act of determining automatically a network communication throughput comprises receiving said network communication throughput from the user system, said network communication throughput being determined automatically by the user system and being indicative of the communications performance the user system is experiencing (24 or 26, fig. 1; para. 0037; as determining operational and performance characteristic or configurations of devices connected to a computer network).

Regarding claim 3, Burman teaches the method of claim 2, whereby the act of determining automatically a network communication throughput comprises re-writing

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cookies with values correlated to non-intrusive observation of effective real-time content throughput at said user system (44, fig. 1; para. 0042; paras. 0124 – 0128; wherein the measurements for the user were previously taken and stored in, a proton server, and the ad selection server may refer to the proton server for speed or bandwidth).

Regarding claim 4, Burman teaches a communications system for selectively communicating a content over a communications network to a user system as a distributed network that allows for resource sharing and data communication (fig. 1; para. 0034). In particular, Burman discloses the claimed features of a communication throughput indicator component configured for determining automatically a network communication throughput indicative of the communications performance the user system is experiencing (para. 0035, lines 1 – 5; as to determine transfer time for data, files sent or transmitted between devices connected to a computer network and calculate the bandwidth between the devices, and the bandwidth for users connected to the computer network); a selection component configured for selecting the content to be communicated based on the network communications throughput (para. 0035, lines 5 – 15; para. 0036, lines 1 – 11. Applicant should duly note that Burman discloses that high bandwidth users will get sophisticated rich media content while lower bandwidth users will get quicker content downloads from servers by determining or monitoring transfer time and bandwidth in real time or near real time); and a communicator component for communicating to the user system the content selected (para. 0036; lines 11 – 26; Burman discloses that the content selected can be and delivered to a user can be for

example, a black and white image for a low-bandwidth user, color version of the same image for an average bandwidth user, and so on).

Regarding claim 5, Burman teaches the communications system of claim 4, wherein said communication throughput indicator component comprises a throughput receiver component configured for receiving said network communication throughput from the user system, said network communication throughput determined automatically by the user system and being indicative of the communications performance the user system is experiencing (24 or 26, fig. 1; para. 0037; as determining operational and performance characteristic or configurations of devices connected to a computer network).

Regarding claim 6, Burman teaches the communications system of claim 5, wherein said communication throughput indicator component comprises cookies configured for re-writing with values correlated to non-intrusive observation of effective real-time content throughput at said user system (44, fig. 1; para. 0042; paras. 0124 – 0128; wherein if measurements for the user were previously taken and stored in, for example, a proton server, the ad selection server may refer to the proton server for speed or bandwidth).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tracton et al (US Patent Number 6,470,378) discloses a dynamic content customization in a client server environment.

Klassen et al (US Patent Number 6,711,137) discloses a system and method for analyzing and tuning a communications network.


Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yves Dalencourt whose telephone number is (571) 272-3998. The examiner can normally be reached on M-TH 7:30AM - 6: 00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Yves Dalencourt


January 21, 2005